



January 5, 2007

Mr. Robert Eadie
Chief, Policy and Program Development Branch
Food and Nutrition Service
U.S. Department of Agriculture
3101 Park Center Drive
Room 634
Alexandria, VA 22302-1594

Dear Mr. Eadie:

The School Nutrition Association (SNA) appreciates the opportunity to comment on the proposed rule on fluid milk substitutions in the school nutrition programs (71 Fed. Reg. 65,753). The School Nutrition Association is a national, nonprofit professional organization representing more than 55,000 members who provide high-quality, low-cost meals to students across the country.

SNA generally supports the proposed rule, which would implement provisions of the Child Nutrition and WIC Reauthorization Act of 2004 (Public Law 108-265). Of course, as with most proposed rules there are clarifications that are necessary, and our comments focus on ensuring the nutritional equivalency of milk substitutes and clarification that providing substitutes for students that are not medically disabled is discretionary.

Nutritional Equivalency

The National School Lunch Act and the proposed regulation appropriately require that any beverage substituted be nutritionally equivalent to fluid milk. While we have not done a thorough review of the types of milk alternatives that are available, we understand that very few products currently satisfy this requirement. For example, calcium fortified orange juice may not meet this requirement, and the same appears to be true for standard soymilk. The lack of nutritionally equivalent products will make it difficult for schools to comply for schools that choose to make this option available. Moreover, for the relatively small number of students that are likely to request an alternative, most schools simply will not have the resources or time to conduct a detailed nutritional review of products to determine which ones comply.

FNS could ease this burden by certifying products as meeting the nutritional equivalency requirement. There are a number of ways that this could be done, but the most logical may be to expand the existing CN labeling program. The program does an excellent job of certifying that products contribute to the meal pattern requirements for food based menu planning. It would be a logical extension of that program's mission to certify nutritional equivalence of alternatives to milk. Food companies would benefit by being able to tell prospective customers that their products comply, and schools would benefit from the assurance of a CN label.

Cost and Discretionary Nature of Proposed Rule

FNS does not envision that the proposed rule would result in a significant shift from milk to alternative beverages. Nevertheless, SNA members are concerned about the cost implications of the proposed rule. As drafted, the rule would require that schools cover the cost of all substitutions. Even on a small scale this could be a difficult cost for many schools to absorb. As FNS knows, while the federal reimbursement for a school meal can vary depending on the income category of the student there is no adjustment when a more expensive food item is used, such as soy milk in place of cow's milk.

For children that are not medically disabled (*e.g.*, suffer from a milk allergy) SNA asks that the final rule be clear that allowing milk substitutes is discretionary and that cost implications are a valid reason for a school to not exercise this discretion. The proposal hints at this being discretionary (*e.g.*, a "school food authority must inform the State agency if any of its schools *choose* to offer fluid milk substitutes" *proposed* 7 C.F.R. § 210.10(g)(2)(ii)(A)). The discretionary nature of the rule should be more clearly articulated in any final or interim rule the agency issues. For example, the first and last sentences of proposed 7 C.F.R. § 21.10(g)(2)(i) could be amended to read as follows (new language in **bold and underlined**):

- (i) *Milk substitutions for non-disability reasons.* **At a school food authority's sole discretion,** schools may make substitutions for fluid milk for non-disabled students who cannot consume fluid milk due to medical or special dietary needs. *
- * * Expenses incurred in providing substitutions for fluid milk that exceed program reimbursements must be paid by the school food authority, **and an expected increase in program costs is a valid reason for not exercising this discretion.**

Nutrition Education Effort

Allowing a parent note to be sufficient justification for this substitution concerns SNA, and we feel that a note from a medical practitioner is more appropriate. Our concern is that parents may ask for a milk substitute out of personal preference rather than to address a valid dietary or medical need. We recognize that the National School Lunch Act mandates the parental notification is sufficient, provided it identifies the medical or other dietary need of the student.

While the agency's hands may be tied on this issue, there are things it can do to ensure that parents understand that their notification must go beyond expressing a personal preference. SNA urges the agency to consider a nutrition education initiative that would address this issue so

that parents and program administrators fully understand the importance of this issue and, importantly, the types of dietary and nutritional needs that merit such a request.

Conclusion

Thank you for the opportunity to comment on this proposed rule. SNA looks forward to working with the agency further on this issue.

Sincerely,

A handwritten signature in cursive script that reads "Janey Thornton, SNA".

Janey Thornton, SNS
SNA President